

July 6, 2000

The Honorable Bruce Babbitt
U.S. Department of Interior
1849 C Street, NW
Washington D.C. 20240

The Honorable Gray Davis
State Capitol Building
Sacramento, CA 95814

Subject: Recommendations for CALFED Record of Decision to Address Environmental Justice

Dear Interior Secretary Babbitt and Governor Davis:

It was just over a year ago that 33 community-based organizations sent you a letter raising concerns about CALFED's commitment to addressing environmental justice issues impacted by the CALFED program. We read with great interest the Framework for Action that was released on June 9, 2000. The Framework represents tremendous progress in charting a path to solve Bay-Delta water management issues in a manner that will require all stakeholders to contribute to and benefit from an array of solutions.

However, we are disappointed and concerned that the Framework does not contain explicit commitments and actions to identify and address the environmental justice implications of the CALFED program. We remain hopeful that our efforts over the last year in CALFED will be reflected in substantive integration of environmental justice into its programs and actions.

Environmental justice is the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies. According to the EPA's Office of Environmental Justice, "fair treatment" means that no group of people, including a racial, ethnic, or socioeconomic group, should bear a disproportionate share of the negative environmental consequences resulting from the execution of federal, state, local, and tribal programs and policies. CALFED's principles include commitments to actions that reduce conflicts, are equitable, and result in no significant redirected impacts. Adherence to such principles requires a commitment to environmental justice.

CALFED's own mandate and its ultimate success requires that it effectively engage communities throughout California to ensure that they are not unfairly harmed by CALFED actions, but also that they can contribute to the solution CALFED seeks. Many of the problems that the CALFED program is meant to address, as well as the proposed and potential solutions, could have a disproportionate impact on low-income people and communities of color. Examples of impacts we have raised during our involvement in the CALFED process over the last year include, but are not limited to, the effects of water management reforms and water transfers on rural communities, including farm workers; the public health and financial impacts of ecosystem and water quality program actions on the large numbers of minorities and disadvantaged people living in urban and rural areas; and, the relationship between water quality and the subsistence fishers that are currently exposed to contaminants in the Bay-Delta waters they fish in and the fish they eat.

A year ago we argued that CALFED must meet its obligations to address existing and potential environmental justice problems for those communities in the Bay-Delta ecosystems and those impacted by Bay-Delta management. These obligations are based on federal and state laws. Executive Order 12898 and state law require that federal and state agencies conduct their programs, policies, and activities to ensure environmental justice. Title VI of the Civil Rights Act of 1964 requires that federal agencies and departments may not provide funding to programs that discriminate on the basis of race, including programs that have the *effect* of subjecting individuals to discrimination and disparate impacts. California's public trust doctrine holds that public resources such as water must be managed to benefit present and future generations of Californians regardless of their status as voters or their power as economic actors.

The CALFED program must make a stronger commitment to identify, address, and mitigate existing and potential environmental justice problems and impacts. By truly embracing its own principles, CALFED's program will affirmatively address existing and potential environmental justice problems in the Bay-Delta, not simply engage itself in an extensive and reactionary mitigation program as it moves forward. During BDAC's review of CALFED's preferred program alternative, BDAC members recognized the need for CALFED to strengthen its commitment to addressing the environmental justice implications of the program. This has been strongly represented in the May 24 letter from BDAC co-chairs Mike Madigan and Sunne McPeak to David Hayes and Mary Nichols (see attached Recommendation on CALFED Solution). BDAC members supported the recommendations we presented to them and recommended that they be incorporated into the ROD, including:

- "CALFED commits that every broad or site-specific measure for achieving CALFED goals will be analyzed technically and impartially before adoption and implementation in order to assure compliance with CALFED's principles, compatibility with other goals, avoidance of significant third party and unmitigable cumulative impacts within a given geographic area and among economic sectors, addressing related environmental justice concerns, and an integrated use of limited financial resources. CALFED will create clear criteria for determining significant third party, environmental justice, and unmitigable cumulative impacts. This will be done and revisions to the plan made by a process described in the ROD/Certification." [Recommendation on CALFED Solution, page 3; emphasis added]
- "CALFED will continue to seek and achieve environmental justice. The CALFED Bay-Delta Program and its participating agencies are committed to seeking fair treatment of people of all races, cultures, and incomes, such that no segment of the population bears a disproportionately high or adverse health, environmental, or economic impact resulting from CALFED's programs, policies, or actions." [Recommendation on CALFED Solution, page 4]
- "In continuing to seek environmental justice, CALFED will develop programs, policies, and actions to: identify and evaluate the environmental, health, social, and economic effects of CALFED activities; propose and commit to measures to avoid and mitigate disproportionate effects; seek participation from potentially impacted communities in finding alternatives or solutions to mitigate impacts; improve research and data collection related to health and environment of minority and low-income populations impacted by CALFED Bay-Delta Programs; and, support outreach and education activities to improve the public's ability to participate in CALFED decision-making and Program implementation, including transparent and facile public access to data taken from all programs." [Recommendation on CALFED Solution, page 4]

- "Identifying performance goals and indicators and assured funding for all Program elements, including environmental justice actions within each program area." [Recommendation on CALFED Solution, page 4; emphasis added]
- "Identifying in the ROD/Certification a timetable for implementing environmental justice actions enumerated in paragraphs c) and f), including the development of environmental justice-related goals and objectives for each of CALFED's proposed programs and dedication of appropriate funding and staffing to implement said environmental justice actions contained in paragraphs c) and f)." [Recommendation on CALFED Solution, page 9]
- Provide for representation of environmental justice, rural, and urban constituencies in its governance and decision making structures, including those developed within program areas. This remains both a long-term and interim governance issue. [Recommendation on CALFED Solution, page 9]

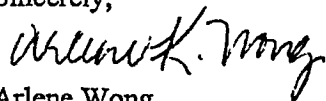
Such commitment and actions should result in discrete program activities that reinforce the linkages among CALFED program objectives and promote community involvement that truly allows attainment of CALFED's overall goals. CALFED staff and members of our coalition have been working on a set of environmental justice recommendations for the Policy Group to consider and incorporate into the ROD. Examples of environmental justice programs CALFED should undertake are:

- Connecting the water quality objectives of CALFED with fish contamination and pollution issues for the subsistence fishing communities throughout the Bay and Central Valley. This could include toxic hot spots planning and clean-up, appropriate testing, monitoring, education, pollution prevention, and best management practices.
- Supporting water use efficiency actions that also provide economic and other benefits to disadvantaged communities by ensuring they have a role in implementing such programs. Examples include not only toilet retrofit program such as those undertaken by community-based organizations in Los Angeles, but also toxics reduction and pollution prevention programs that are linked to water-efficiency and wastewater reduction, and increased skill development for farm worker irrigators.
- Providing incentives to implement best management practices in both agricultural and urban areas to reduce discharges by engaging community actors who are actively seeking to address water quality issues through pollution prevention, monitoring, and education activities.
- Improving groundwater management through improvements in groundwater quality. The ability for groundwater aquifers to serve as a source of storage and supply is also reliant on groundwater quality. Groundwater quality improvement should engage local actors in watershed management practices as well as clean up and protection actions to ensure that groundwater storage and transfers do not result in decreased water quality for users.

These recommendations (from BDAC and CALFED staff) are not reflected in the Framework and need to be included in the forthcoming Record of Decision. A vision for a balanced solution must recognize that California's communities of color and low-income communities are part of this solution, and therefore these communities must be explicitly engaged in CALFED actions. The Framework for Action does not adequately address this need. CALFED's Record of Decision must include a strong commitment to ensure community and environmental justice interests are represented and acted upon.

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Sincerely,



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